

HAVERSTOCK & OWENS LLP

PATENT, TRADEMARK & COPYRIGHT ATTORNEYS

162 NORTH WOLFE ROAD
SUNNYVALE, CALIFORNIA 94086
TELEPHONE (408) 530-9700
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June 5, 2006

Sunnyvale City Council
City Hall
456 West Olive Avenue
Sunnyvale, CA

RE: Appeal of Planning Commission approval of Use Permit to allow long-term boarding and daycare services for up to 335 dogs and 50 cats and including ancillary retail services, in an existing building located at **180 North Wolfe Road** in an M-S (Industrial & Service) Zoning District
File Number 2006-0357 (APN: 205-43-023)

Dear Members of the Sunnyvale City Council:

We are owner occupiers of the building located at 162 North Wolfe Road. For several reasons which are set forth below, we respectfully appeal the Planning Commission's approval of a conditional use permit to allow kennel services for up to 335 dogs and 50 cats in an existing building located at 180 North Wolfe Road. We previously submitted our objections to the Planning Commission in a letter dated May 22, 2006. Despite our objections, the Planning Commission approved with conditions the use permit, limiting the initial duration of the use permit for a review period of two years, by a vote of 4-1 (1 absent). The proposed site for the kennel is on the property adjacent to our business. The subject property has two buildings, one of which sits between our business and the proposed kennel.

We are a law firm engaged in the practice of intellectual property law. We purchased the building in 2001 and remodeled it such that the building now provides a quiet atmosphere to our patent attorneys, patent agents, law clerks, staff members, and personnel. When we purchased the building, the uses of the surrounding area were primarily professional and administrative services and light industrial uses. Thus, it appeared that the City of Sunnyvale had encouraged professional and administrative services, with some light industrial uses, to coexist in this neighborhood. To date, we have enjoyed a quiet peaceful neighborhood.

However, if a conditional use permit is granted as proposed by the applicant and the owner of the

building located at 180 North Wolfe Road, the proposed kennel will only serve to disrupt the quiet peaceful atmosphere of the neighborhood. **In other words, the proposed use to provide kennel services to 335 dogs and 50 cats is incompatible and not in harmony with the other existing uses of the neighborhood. Further, the proposed project will become a nuisance in the neighborhood, based on the odor, noise, and traffic issues that will arise if the conditional use permit is granted.**

We are also concerned about how the nuisance shall negatively impact the current professional setting of our neighborhood. When our clients visit our building, their initial impression is that of a clean, professional setting with no noise, traffic or odor nuisance present. However, should this proposed use permit be approved by the City of Sunnyvale, our clients will no longer have that positive first impression of our business surroundings. Instead, our clients shall be subjected to animal smells, odors, and barking, particularly when the dogs are walked outside on the public streets. Further, the additional traffic due to the proposed project shall discourage our clients from visiting our facility. This in turn shall affect our business relations with our clients. Further, having a nuisance in the form of a nearby kennel in our neighborhood shall ultimately affect the real estate value of our property.

We appeal the Planning Commission's decision to approve the use permit based on the following five grounds:

1. The proposed use is not permitted by right in this zoning district. Also, the proposed use is incompatible with the existing uses of the neighborhood.
2. The noise level will exceed the noise or sound level allowed by the Sunnyvale Municipal Code.
3. Odor and waste disposal problems are reasonably foreseeable if the proposed use is allowed.
4. Traffic issues shall arise if the proposed use is allowed. No traffic study was performed.
5. The Negative Declaration is primarily based on applicant's self-serving unverified opinions and is not reasonably based on independent investigation, analysis or data.

Proposed Use Not Permitted by Right and Is Incompatible with Existing Uses

The proposed use of a kennel for housing approximately 385 animals is not permitted by right in the industrial zone of M-S. In fact, the use of a kennel or other animal boarding facility is not listed in the table of Permitted Uses in this zone. See Sunnyvale Municipal Code §19.22.030 Permitted, Conditional Permitted and Prohibited Uses in Industrial Zones and Table, as amended. The applicant plans on opening a kennel called Wag Pet Hotel at the proposed site of 180 North Wolfe Road.

Further, the proposed use is not a compatible use with existing uses in the neighborhood. The Sunnyvale Municipal Code defines a compatible use as "a use which fits in with or is in harmony with other existing uses in the same zoning district, neighborhood or surrounding area."

§ 19.12.220 "U" The existing uses of the neighborhood are administrative and professional offices (such as our building, a title company building, a medical dialysis service, and Maxim

and National Semiconductor buildings), light industrial and service businesses (such as an architectural graphics shop, a body shop, and service shops), and food eateries.

The proposed use of housing approximately 385 animals for long-term boarding and daycare service in a kennel does not fit in with and is not in harmony with the existing uses of the surrounding area. Furthermore, the proposed use can be categorized as a prohibited use under Sunnyvale Municipal Code Table §19.22.030, amended, which prohibits “any use which is obnoxious, offensive or creates a nuisance to persons in adjacent buildings or premises through emissions of dust, fumes, glare, heat, liquids, noise, odor, smoke, steam, vibrations or similar disturbances.” (emphasis added) Certainly, 385 noisy animals, along with their fecal and urinary waste, will create a public nuisance, thereby detrimentally impacting the peaceful, clean atmosphere of the existing surrounding area. Nuisances by animals are prohibited under the Sunnyvale Municipal Code § 6.16.015. Further, nuisances are prohibited in any zoning area pursuant to Sunnyvale Municipal Code § 19.42.020.

Also, we respectfully object to the two recommended findings which appear on Attachment A of the City of Sunnyvale Report for the Planning Commission dated May 22, 2006. As quoted in the recommended findings:

Policy N1.6: Safeguard industry’s ability to operate effectively by limiting the establishment of incompatible uses in industrial areas. (emphasis added)

The proposed use of a kennel is simply incompatible with the other uses in the neighborhood, as noted above.

Further, the applicant has submitted some information in support of his application based on alleged findings and measurements made from a Wag Pet Hotel located in West Sacramento. This West Sacramento kennel is zoned in heavy industrial (M-2) [see Exhibit A, Business License Application with stamp of M-2 approval on top]. The West Sacramento kennel is in the midst of heavy industrial shipping and manufacturing warehouses, and it further backs to abandoned railroads and fields. Indeed, the West Sacramento Code does not have a noise ordinance for that zoning district. Such a location in the **heavy industrial zone** is appropriate for a kennel. An industrial and service neighborhood, such as the M-S zoning district at issue, is not appropriate for a kennel, particularly when the existing uses are for administrative and professional buildings and light industrial uses.

Even though Policy N1.6 is noted in the recommended findings, the first finding states that the proposed project will bring a different type of commercial use to the City and that it is a business not overly represented within the City. There are kennels and doggie day care centers throughout the City of Sunnyvale. There is no necessity to house nearly 385 animals in one kennel, and further, the proposed kennel should not be situated in this particular neighborhood, which is zoned for industrial and service.

Also, we object to the second finding that the proposed use will not negatively impact surrounding industrial uses. We believe that the proposed use shall be the foundation block for a nuisance to develop in the neighborhood. Our reasoning is set forth below.

Noise Level

The proposed project shall negatively impact the surrounding area due to the noise that will be generated by animals in a kennel. The kennel is projected to house approximately 385 animals. As described in our letter addressed to the Planning Commission, I personally measured the sound level outside the local Humane Society in Santa Clara using a decibel meter, and the sound level was 83.7 dB, which exceeds the Sunnyvale Municipal Code and is greater than the noise of a jack hammer which measures 80 decibels at a distance of 50 feet according to the User's Guide supplied with the decibel meter that I used.

The Sunnyvale Municipal Code § 19.42.030(a) states in part "Operational noise shall not exceed seventy-five dBA at any point on the property line of the premises upon which the noise or sound is generated or produced . . . If the noise occurs during nighttime hours and the enforcing officer has determined the noise involves a steady, audible tone such as a whine, screech or hum, or is a staccato or intermittent noise (e.g., hammering) or includes music or speech, the allowable noise or sound level shall not exceed forty-five dBA." (emphasis added)

When the Planning Commission members asked the city staff what was the allowable noise level in a M-S zoning district, the city staff stated that the noise level shall not exceed 75 dBA. However, the city staff did not inform the Planning Commission members of the underlined language quoted above, which indicates that at nighttime under certain conditions, allowable noise shall not exceed 45 dBA.

Further, apparently, Mr. Joel Leineke, the potential new tenant and owner of the kennel business Wag Pet Hotels, submitted a noise report (hereinafter "Noise Report") to the city staff on or about May 22, 2006. However, it appeared that none of the Planning Commission voting members had an opportunity to personally review the applicant's Noise Report prior to voting.

The Noise Report was prepared by Harris Miller Miller & Hanson (HMMH) Inc., based on their observations during Christmas weekend at the Wag Pet Hotel in their West Sacramento facility when the facility was housing 200 dogs, according to Mr. Leineke's statements during the Planning Commission meeting. Mr. Leineke also provided us a copy of the Noise Report. A copy of the Noise Report is not included with this appeal, since it has apparently been filed by Mr. Leineke in support of his application.

We disagree with several observations and findings made in the applicant's Noise Report. For instance, the Noise Report is suspect in some respects:

1. The West Sacramento facility that was tested by HMMH has two high-bay roll up steel doors, which are "kept open for the majority of the day and open onto an unused rail spur and the

backs of adjacent warehouses.” (Noise Report, page 1, emphasis added). Section 2.2 Testing Methodology readily admits that although the high-bay doors presented the most significant acoustical vulnerability of the West Sacramento facility, the location outside a personnel door was selected for testing noise levels. The Noise Report erroneously states that “[h]igh-bay doors at the rear are not typical of all such warehouses and are not anticipated at future Wag Pet Hotel locations.” (page 6, emphasis added)

However, the building at 180 North Wolfe Road has two high-bay doors, just like the West Sacramento facility, which face towards the cul-de-sac of San Lorenzo (See Exhibit C). Therefore, the Noise Report is suspect on its face, since measurements should have been taken at the most significant acoustical vulnerability (the high-bay doors), in order to give an accurate reading of the projected noise for the upcoming proposed use of 180 North Wolfe Road. Also, since the high-bay doors are kept open for the majority of the day, noises from animals are most likely to emanate from the building at 180 North Wolfe via the high-bay doors to the outside area, thereby disturbing the peace. Since the two high-bay doors at the Wag Pet Hotel in West Sacramento are open for most of the day, according to the applicant’s Noise Report, it is more likely than not that the two high-bay doors at 180 North Wolfe Road will also be open for most of the day.

Even though we disagree with the Noise Report, the applicant’s own Noise Report shows that a representative sample hour of employee exposure based on indoor monitoring shows that the maximum noise level (Lmax) measured was 103.7 dBA at 6:53 a.m. (page 11 and Figure 5). Further, for one employee (Kelly), the maximum noise level was 115.8 dBA (Table 4 on page 12). If the two high-bay doors at the 180 North Wolfe Road location are open for most of the day, the noise level on the outside will be nearly at the same noise level as the dog barks that were monitored from indoors. Certainly, if heard outside, these dog barks would violate the noise limits as set forth in the Sunnyvale Municipal Code. Also, the applicant’s Noise Report states that maximum exterior noise levels of 62 dBA are attributed to the barking dogs (page iii). Thus, even by the applicant’s Noise Report measurements, if the dogs are barking at nighttime, the dogs’ barks would constitute a sound level exceeding the nighttime limits of 45 dBA (see Sunnyvale Municipal Code § 19.42.030(a)). Further discussion regarding Sunnyvale Municipal Code § 19.42.030(a) is provided later herein.

It should be noted that Mr. Leineke claimed during the Planning Commission Meeting that the two high-bay doors at 180 North Wolfe Road will be closed at all times except for certain occasions, such as moving furniture in and out of the building. However, no questions were asked of the applicant regarding the measurements of his Noise Report. Further, no conditions were placed by the Planning Commission on the use permit requiring that the two high-bay doors remain closed or permanently sealed if the use permit were granted.

Further, even if Mr. Leineke agrees to having the two high-bay doors closed at 180 North Wolfe Road, that does not solve the problems. One of our employees visited the West Sacramento facility of Wag Pet Hotel and he clearly heard dogs barking 10 feet outside the building. Further, the two high-bay doors at the proposed location of 180 North Wolfe Road are on either side of the proposed indoor pool for the dogs. Therefore, it is likely that the smell and odor of wet dogs will exit the building if even one of the two high-bay doors are opened or slightly ajar. Further discussion regarding the odor issues shall be found later herein.

2. The Noise Report is simply not credible. It claims that based on the measurements taken outside the personnel door, "[t]he noise data determined that the maximum of outdoor noise attributable to barking dogs is up to 62 dB at a distance of 10 feet from the building." (page 7) Also, ambient noises were subtracted from the readings (see Footnote 1, page iii). But, the 24 hour monitoring diagrams in Appendix D, which support the Noise Report and its conclusions, are suspect on their face.

From time 18:10:00 (6:10 pm presumably) to time 21:15:00 (9:15 pm), it is noted that the dogs are in the play area and possible dogs are barking. But, from time 21:15:00 (9:15 pm) to time 10:10:00 (10:10 a.m. the next day), no dog barks are noted. Instead, notations such as "traffic and other community noises sources", "rain begins" "rain begins, ambient noise increases by 3 dB" and "stop mechanical source, not related to Wag Pet Hotel" are provided instead.

Based on the applicant's Noise Report, no dog barks were recorded from the outside for nearly thirteen hours (from time 9:15 pm to time 10:10 a.m. the next day). The fact that no dog barks were recorded from the outside defies logic, since the measurements were allegedly taken during a peak occupancy of animals occurring over Christmas weekend of 2005 (Noise Report, page 1). Further, the 24 hour outside monitoring reports in Appendix D are suspect since on December 24 during the same Christmas weekend, a maximum noise level measured by an employee in the kennel area was 103.7 dBA at 6:53 am and yet no dog barks were detected or monitored outside in the early morning hours according to Appendix D during the same weekend.

Contrary to what the applicant's Noise Report suggests, it is likely that dog barks during the nearly 13-hour time period were detected from outside and have been mislabeled "traffic and other community noise sources." It appears that the Noise Report is flawed, inaccurate and/or misleading.

3. The Noise Report is improper. Ambient noise was measured and then that background level was subtracted from any subsequent measurement. (page iii, Noise Report). However, the Noise Report does not indicate the estimated ambient noise levels, even in footnote 1 of page iii in the Noise Report. Therefore, if a dog barked at 105 dB, the background noise was improperly subtracted (the value of which is unknown) which falsely implied that the dog barked at a lower value than 105 dB and not at the actual 105 dB. The noise of the bark is what is measured and not some value calculated by subtracting an arbitrary number. The Sunnyvale Municipal Code § 19.42.030(a) states in part that the allowable noise or sound level shall not exceed 45 dBA if the noise occurs during nighttime hours and the enforcing officer has determined that the noise involves a steady, audible tone such as a whine (like a dog's whine) or is a staccato or intermittent noise. Even one barking dog can make a staccato or intermittent noise. Nighttime is defined in the Sunnyvale Municipal Code as the period from 10 pm to 7 am daily. Sunnyvale Municipal Code § 19.12.150 "N"

Suspiciously, no dog barks were recorded from the 24 hour outdoor monitoring by the Noise Report presented by Wag Pet Hotel from 9:15 pm to 10:10 a.m. the next day during the monitoring period in Appendix D. As stated previously, it is unlikely that no dog barks were undetected from outside monitoring during the nearly 13-hour period. Pursuant to the Sunnyvale Municipal Code, under certain circumstances, the noise level cannot exceed 45 dBA during

nighttime hours. It is likely that the noise level will exceed 45 dBA during nighttime hours since when dog barks are noted in the Noise Report in both the indoor and outdoor monitoring, the dog barks exceeded 45 dBA. I and many of my colleagues have worked well past midnight on many occasions; therefore, noise levels at nighttime hours are also a concern of ours. Further independent investigation is required beyond the observations noted in the applicant's flawed Noise Report.

4. Mr. Leineke stated during the May 22, 2006 Planning Commission meeting that the measurements of the Noise Report were taken when the West Sacramento Wag Pet Hotel housed 200 dogs. Mr. Leineke is now requesting that his use permit for the proposed location of 180 North Wolfe allow for the kennel to have a capacity of up to 385 animals. Therefore, the applicant's Noise Report cannot be relied upon as an accurate measure of the noise level of up to 385 animals, when it only measured the noise level of approximately 200 dogs, nearly half of the requested capacity of the proposed kennel at issue.

Odor and Waste Disposal Issues

Mr. Leineke has proposed that fecal waste of the animals shall be disposed on a daily basis via a commercial dumpster, which then recycles the waste. Also, Mr. Leineke has also proposed that the air in the facility shall be replaced twelve times every hour.

However, when we visited the Wag Pet Hotel West Sacramento facility, we observed that some dogs urinated along the edge where the high-bay doors close. There was significant staining outside the high-bay doors, presumably from urine being washed out through those doors. A photo of the stained high-bay doors is attached as Exhibit B to this document. Further, we observed smells of wet dogs (probably aided by the indoor pool for dogs) and urine odors. A similar indoor pool is proposed for the location at 180 North Wolfe Road.

Our concern is that at least animal urine will be washed out through the high-bay doors at the location of 180 North Wolfe Road, just like in the West Sacramento facility. The high-bay doors of the proposed project face the asphalted cul-de-sac road of San Lazaro Avenue (see Exhibit C), and are close to a storm drain. Also, it is likely that some animals will urinate and produce excrements outside the building in the proposed location. With the sunny conditions of Sunnyvale and a breeze, the odor and waste fumes from the animal waste will easily become a public nuisance to the neighbors of the area. It is also likely that when dogs are walked outside, "accidents" will occur, and their wastes shall soak into the asphalt, the public streets or sidewalks, and/or the grounds of the area, thereby causing permanent stains and odors. We are also concerned that the urine and wastes of the animals will also enter into the storm drain on San Lazaro Avenue. Further, we are concerned that wastes and litter from 385 animals in a dumpster will be odor-producing and will ultimately destroy the clean atmosphere of the present area.

Traffic Impact

The applicant has requested a use permit to provide long-term boarding and daycare for up to 385 animals. Thus, it is possible that over 300 cars, SUVs, trucks, or other vehicles shall visit, drop

off or pick up animals in this proposed facility at any given day. This shall detrimentally affect the traffic flow of the existing neighborhood.

If a car is heading South, the car must make a U-turn at the stoplight at Kifer in order to reach the building of 180 North Wolfe Road. If the car is on San Lazaro Avenue, to reach the building on 180 North Wolfe Road, the car must circle at the cul-de-sac at the end of San Lazaro Avenue to enter into one of the entrances to 180 North Wolfe Road. All of this equates to backed-up traffic on both Wolfe Road and San Lazaro Avenue, and it will negatively impact the ramps between Central Expressway to and from Wolfe Road.

Negative Declaration and the Need for Independent Investigation

The report indicates "No impact" for all the areas on the Negative Declaration prepared by the principal planner of the City of Sunnyvale, Gerri Caruso. However, no particular source is indicated adjacent to all of the "No impact" designations throughout the Negative Declaration. A two page attachment citing 114 references is provided, but no particular source is indicated for each "No impact" answer to each question.

Further, it appears that the Negative Declaration is based on some information provided by the applicant, which is not noted on the Negative Declaration, but was discussed during the Planning Commission Meeting of May 22, 2006. It is our understanding that the applicant submitted their self-serving unverified opinions as to certain environmental impacts that will be caused by the proposed project. Our concern is that the Negative Declaration is not based on independent investigation, data or analysis; rather, it appears that the Negative Declaration is simply based on the applicant's submissions, which are unverified, flawed and unsubstantiated. In particular, during the May 22, 2006 Planning Commission meeting, Gerri Caruso stated that the Noise Report submitted by the applicant was taken by her as being accurate. In other words, it appears that no independent investigation was taken by the city staff to determine whether the Noise Report submitted by the applicant was in fact accurate.

As discussed previously, one of our employees recently visited the West Sacramento facility of Wag Pet Hotel. Contrary to what the Noise Report indicates, and what the applicant stated during the May 22, 2006 Planning Commission meeting, barking dogs can be heard outside the West Sacramento facility within 10 feet of the building, based on the observations of our employee. Further, as explained above, the Noise Report of the applicant is suspect on its face.

We respectfully request that an independent analysis of traffic, odor, waste, and noise concerns be conducted by the City of Sunnyvale. Even if there is no similar business in the City of Sunnyvale, certainly there are similar businesses within the County of Santa Clara that can be reviewed. We reviewed both the Humane Society in Santa Clara as well as the West Sacramento facility of Wag Pet Hotels, and our observations only increased our concerns as set forth herein. Also, notably, a Petsmart PetHotel shall be opening soon in Mountain View (see Exhibit D).

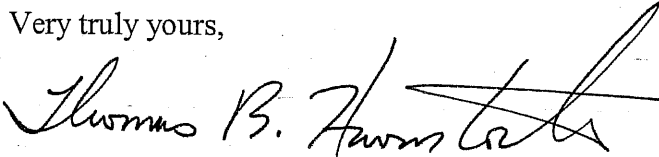
The applicant's proposed business of housing nearly 400 animals in one kennel is not necessary

and it certainly will develop into a nuisance for our neighborhood. Also, the proposed project will create significant environmental impacts as explained herein, and those environmental impacts should be explored beyond what has been submitted solely by the applicant.

Conclusion

We respectfully ask the City Council to deny the proposed use permit for 180 North Wolfe Road. Alternatively, we ask the City Council to send this matter back to the Planning Commission for further investigation as to the issues above. Alternatively, should the City Council decide to grant the proposed use permit, we request that the City Council impose a limitation of a one-year duration period on the conditional use permit.

Very truly yours,



Thomas B. Haverstock
Appellant

TBH:mms

Enclosures:	Exhibit A	First page of Wag Pet Hotel's Business License Application in West Sacramento (redacted)
	Exhibit B	Photo of High Bay Doors of Wag Pet Hotel in West Sacramento
	Exhibit C	Photo of High Bay Doors of proposed location at 180 North Wolfe Road
	Exhibit D	Newspaper Clipping Regarding Petsmart PetHotel



Department of Finance

1110 West Capitol Avenue
P.O. Box 986
West Sacramento, CA 95691
(916) 617-4589

CITY OF WEST SACRAMENTO
PAID - CASHIER
JUL 22 2005
CASH CHECK ID 1133
\$ 40.00

ATTACHMENT I

Page 2 of 13
Kenbel

Accession, Pet grooming
BUSINESS LICENSE
APPLICATION
Approved 7-16-05
SAC

Business License Number 10195

Date of Application July 11, 2005

copy of Kennel certificate
Attached.

Application for: ☒ New Business License ☐ Change of Address ☐ Change of Ownership ☐ Update Records

Ownership Type: ☐ Corporation ☐ Partnership ☐ Sole Proprietor ☒ Limited Liability Corporation

Business Name: Bark Kennel & Boarding, LLC DBA Wag Hotels

Business Location: 1759 Enterprise Blvd., West Sacramento CA 95691-3457
(No P.O. Boxes)

Business Phone: (888) 924-5463 Email Address: joel@waghotels.com

Business Mailing Address (if different)

Manager Pamela Mowry Parcel 867-020-171

Owner/Corp. President Joel D. Leineke Home Phone (916) 608-2248

Home Address 1308 Fong Street Folsom, CA 95630

Social Security # Age 36 Driver's License #

Second Owner / VP Ritu Raj Home Phone (415) 876-7000

Emergency Contact for Police and Fire Joel Leineke Phone (916) 608-2248

Resale Number Pending Federal ID No. (FEIN) 84-1668597

State ID No. (SEIN) Pending Nonprofit No. N/A

Type of Business: ☐ Retail ☐ Wholesale ☐ Mfg. ☐ Mobile ☐ Home Occupation ☐ Contractor ☒ Other

NAICS Code 812910 Gross receipts Under \$500.00/1st year No. of Employees 20
(for this location) (at this location)

Describe Business Dog & Cat Boarding Facility

Professional License No. N/A

Do you have another location in West Sacramento that is part of this business? ☐ Yes ☒ No

If yes, list address

I declare under penalty of perjury that, to the best of my knowledge, the information provided herein on this application is true and correct. I understand that if issued a Business License, I will conduct business in a lawful manner and will obey the laws of the United States, the State of California and the City of West Sacramento, and that in conducting said business, said license is subject to suspension for violation of laws and ordinances.

Applicant's Signature Date July 11, 2005

EXHIBIT A

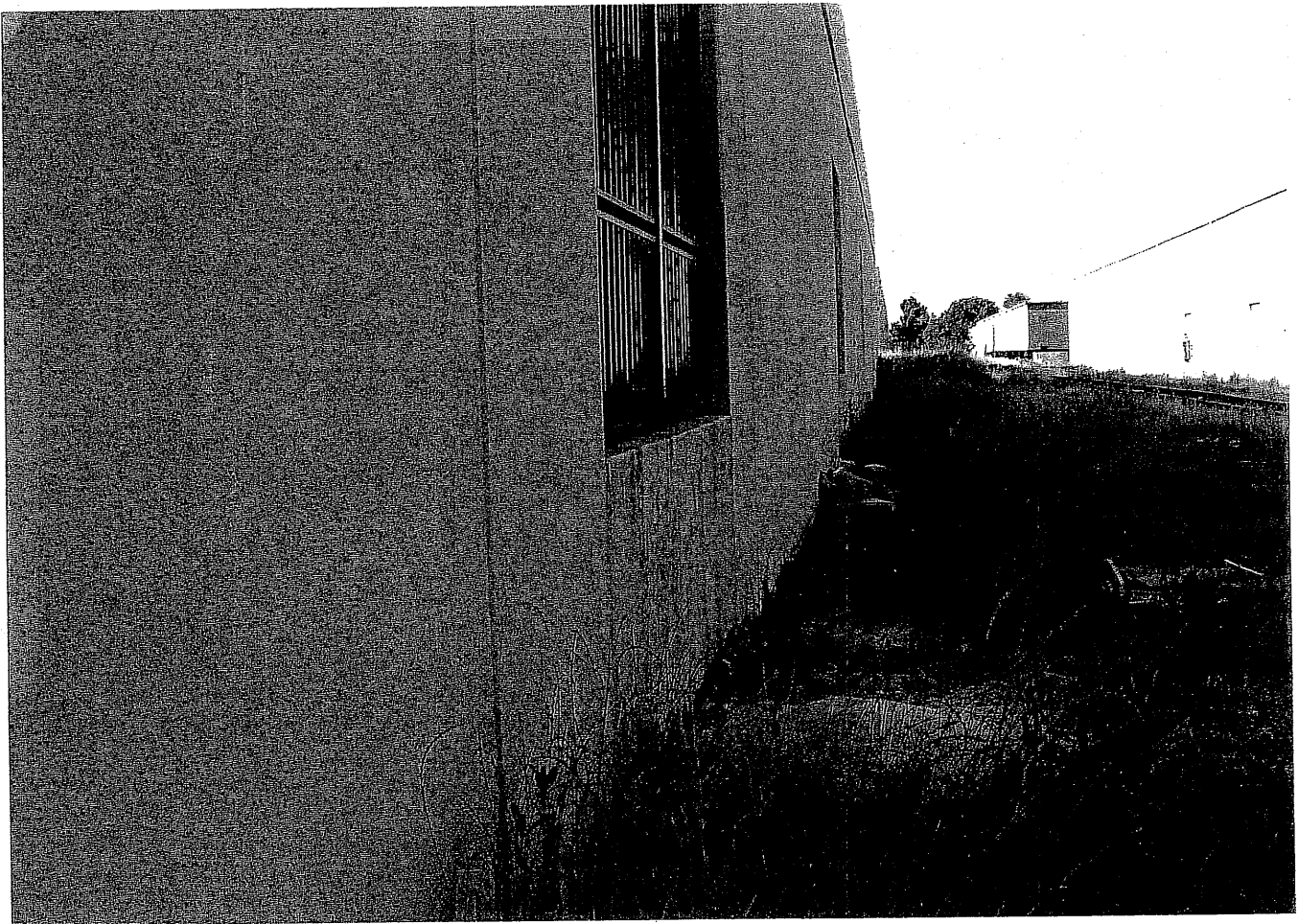


Exhibit B

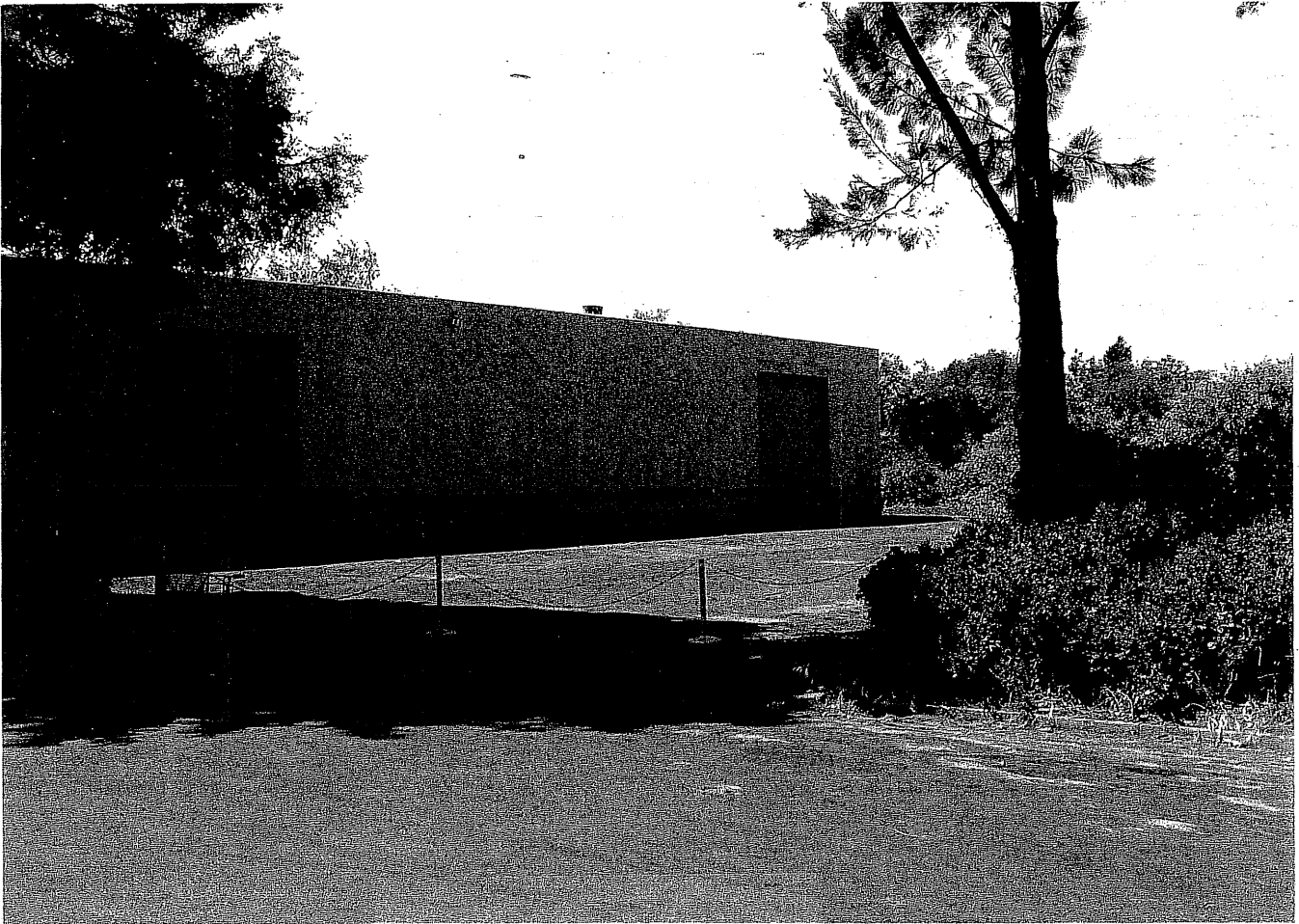


Exhibit C

Retail

PETSMART

PetsHotel

Now Hiring

If you love caring for pets,
PetsHotel is looking for you



PetsHotel offers "all the comforts of home" for both dogs and cats. With 24-hour supervision, atrium, rooms and suites, on-site grooming and pet training services as well as organized play time, we've set the stage for the ultimate in pet safety and comfort. Now we're looking for energetic and enthusiastic associates to join our team.

NOW HIRING IN MOUNTAIN VIEW!

PET CARE SPECIALIST

Take care of our customers and their pets to ensure a clean, safe and enjoyable experience. Duties include walking dogs, spending time with cats, cleaning rooms and monitoring each guest to ensure they have food, water and comfortable bedding.

NIGHT PET CARE SPECIALIST

Take care of guests, facilities and emergency issues which arise during the overnight shift (10pm to 7am). You will also have many of the same duties of the Pet Care Specialist, listed above.

GUEST SERVICES ASSOCIATE

Provide excellent customer service and ensure all customers and their pets have a enjoyable experience. Duties include answering phones, making reservations on the computer, completing paperwork for each guest, informing customers of additional services, reconciling customer invoices and maintaining a clean, well-stocked lobby.

SENIOR PETSHOTEL ASSOCIATE

Act as a role model to our Pet Care Specialists and Pet Care Associates. Duties include solving problems and responding to emergencies, providing exceptional customer services and performing the duties of Pet Care Specialists and Guest Services Associates, as needed.

Apply online at www.petsmart.com and click on the careers link, search by Mountain View, CA store 1575 to complete an employment application.

EOE M/F/D/V drug free workplace



June 27, 2006

City of Sunnyvale
Planning Division
Attn: Gerri Caruso
456 W Olive Ave
Sunnyvale, CA 94086

RE: Conditional Use Permit
180 North Wolfe Road

Ms. Caruso:

Thank you for the time you have put into the Use Permit Application we have submitted for the above referenced property. I have reviewed the appeal submitted by Thomas Haverstock of Haverstock & Owens and while I understand his concerns, I believe he inaccurately represents some items relating to our proposed use. I have outlined a response to those items below.

Noise Level

In general the appellant takes issue with the accuracy and validity of the report prepared by Harris Miller Miller & Hanson (HMMH) Inc. HMMH is an independent testing firm specializing in acoustics and has done extensive work for clients in and around the Sacramento area, including the local governments and at the Sacramento International Airport. HMMH was commissioned by Wag Hotels for the purposes of providing an OSHA compliance audit as well as for our use as we went to new cities around the country. Wag is committed to being a good employer and good neighbor and we sought to find the areas where we fell short of our ideal in our *Prototype Facility* in West Sacramento so those areas could be corrected in future designs. HMMH is a reputable independent firm and their findings can be considered as valid as would be expected from any independent testing agency.

In the appeal, Mr. Haverstock makes several references to the number of animals in the proposed Sunnyvale location. As cats cannot be considered a noise nuisance, the number of dogs that could possibly be served would be 335. Our Sacramento facility has 151 rooms, each of which could have double occupancy, giving us a total possible of 302 dogs. What we have found is that rooms sell out and we have approximately 200 dogs in the house. In our application we used the number of 335 as to total possible number of dogs that could be housed knowing that it is unlikely we would ever achieve that level. In that way, the noise levels for the West Sacramento facility should compare well to what we expect at the Sunnyvale location.



The appellant makes a comparison of our hotel and the noise that might be generated to the Humane Society facility which is not a relevant comparison. First, Wag is entirely an indoor facility which reduces the noise pollution in the area around the building. This was by design so that our hotels could be located in areas convenient for the public. Second, our facility uses acoustic ceiling tiles and wall boards as well as interior walls that are insulated all designed to limit the possible noise pollution from room to room, within a room or from inside the building to the outside. Third, most of the dogs at the Humane Society are stray dogs and many are not yet even house broken let alone socialized. This is simply not the case with the dogs brought to our hotel. Our clients consider their pets a member of the family and the dogs often are better behaved than many people.

A concern has been raised about roll up hi-bay doors. Again, a design change has been made from our Sacramento facility to the Sunnyvale location that changes how those doors are dealt with. In Sacramento, the doors open on the play area and they are often kept open for fresh air for the staff and dogs during play groups. In the Sunnyvale facility, we changed the play area and put it in the center of the building for more efficient flow in bringing dogs into the play groups. The hi-bay doors are in the boarding area and so would never be opened to prevent a dog from possibly getting loose within the facility and being able to run outside. The boarding areas have a completely self contained drainage system so no urine or cleaning solution could possibly leak out the doors into the adjacent area. Again, comparing the doors at this facility to the West Sacramento facility is not a valid comparison.

The appellant also uses the test data from HMMH recorded inside the building and incorrectly assumes that the same noise would be heard outside the building. Again, this is not a correct assumption. As stated previously, the exterior walls of the building are concrete and allow virtually no noise transmission. The only noise that comes out is restricted to exit doors which are kept shut.

Lastly, a concern was raised regarding the noise levels possible overnight. Our operations work in a way that the dogs are bedded down for the night at around 8-9 pm and are not fed in the morning until 7-8 am. When the dogs are not disturbed overnight in this way, most go through the night without making any noise at all. Occasionally one dog might be upset and be causing noise and the staff is trained to remove that dog to an isolation area or it is brought into the staff break area so that the other dogs are not disturbed.

Odor Pollution

As we have indicated, Wag Hotels is a premier pet hotel. Our facilities are designed in such a way that they are several steps above anything in the industry. One of the primary concerns of our clients and why they don't like to use traditional kennels is the odor



present in those facilities. At Wag, we have taken extensive and costly measures to limit the odor at our facilities making this a non issue. We would not be able to provide the level of service at the overnight rates that we do if odor was a concern when our customers delivered their pets to us. The primary reason for odor generation at a facility like this happens when urine, cleaning solutions and other matter seep into the porous concrete. Wag seals all the floors inside the facility with an epoxy coating preventing that situation. In addition, all pet rooms have a self contained drainage system that takes waste material directly into the sewer and uses a specially engineered pressure washing system that cleans with animal and environmentally friendly cleaners providing a clean and healthy environment.

The appellant raises concerns about animals being walked through the neighborhood and having accidents that would cause odors in the area. In working with the planning commission, Wag agreed to temporarily convert several of the unnecessary parking places into a grassy area for walking dogs. The proposed location was in an area the furthest possible from any neighbors and that area would be treated with enzymes and waste would be bagged and removed eliminating any odor concerns.

Traffic

Wag has not commissioned a traffic flow report of any kind as we have not found it a concern to us or our surrounding neighbors. While the appellant raises a concern about 300 cars coming and going possibly every day that is simply not the case. At our facility we find that rarely do we have 4 clients arriving at the same time and generally only 1 or 2. Below is our customer arrival and departure list for this past Christmas & New Years as well as for the coming July 4th Holiday weekend. Over Christmas & New Years, the facility had no rooms left to rent and we had approximately 200 dogs in house. As you can see, the maximum number of vehicles that came on any day was 56 and that was on the Friday before Christmas when most other businesses would be shut down.

Day	Date	Departure	Arrival	Day	Date	Departure	Arrival
Thu	22-Dec	0	37	Thu	29-Jun	3	49
Fri	23-Dec	4	56	Fri	30-Jun	7	46
Sat	24-Dec	5	48	Sat	1-Jul	12	23
Sun	25-Dec	19	20	Sun	2-Jul	30	7
Mon	26-Dec	47	15	Mon	3-Jul	27	6
Tue	27-Dec	41	8	Tue	4-Jul	25	5
Wed	28-Dec	40	12	Wed	5-Jul	47	
Thu	29-Dec	18	17				
Fri	30-Dec	24	21				
Sat	31-Dec	11	35				
Sun	1-Jan	60	2				
Mon	2-Jan	30	5				



In closing, while the appellant raises several concerns about the impact of our facility on his building, I would like to note that between the appellants building and the proposed hotel building is a fabrication facility where metal is cut, bent and otherwise assembled. On any given day the roll up doors on that fabrication facility are open allowing any noise generated to escape unrestrained into the surrounding area. In addition, the proposed building is adjacent to Central Expressway on the other side and there is a constant level of noise generated from that route. The West Sacramento facility has neither of these buffer's to our surrounding neighbors and in fact the facility shares a building with two other tenants. To date there have been zero complaints from surrounding tenants or the landlord on issues of noise, odor or traffic.

Wag Hotels prides itself on being a good neighbor and adding to the community not detracting from it. We have had conversations with several of the tenants surrounding the proposed location and we have been well received and people are looking forward to us joining the neighborhood. Wag plans a substantial capital investment into the building and expects to be a good neighbor for years to come. We regret that due to the required capital investment that any imposed time limit on the use permit could prevent a business decision to go forward as risk of recapturing that capital would be too great. We respectfully request that the council approve our use with no time limit.

I look forward to seeing you at the Council meeting.

Thank you,

Joel D. Leineke
President
Wag Hotels

ATTACHMENT J
Page 5 of 6

From: <jmgaylord@centexhomes.com>
To: <GCaruso@ci.sunnyvale.ca.us>
Date: 6/29/2006 2:47:44 PM
Subject: Re: CC&R's and Street names

Geri-

Not sure if you ever received this information but I believe this is the email you were looking for regarding street names. Thanks,

John

John Gaylord
Land Development Manager
CENTEX HOMES - Bay Area Division
2527 Camino Ramon, Suite 100
San Ramon, CA 94583
Tel: (925) 415-1639 Fax: (925) 415-1601
Email: jmgaylord@centexhomes.com

----- Forwarded by John M Gaylord/US/CentexHomes on 06/29/2006 02:42 PM

Jeff Jacobs

To: John M Gaylord/US/CentexHomes@CentexHomes, Arthur S
05/24/2006 03:59 Adrian/US/CentexHomes@CentexHomes
PM **cc:**
Subject: Re: CC&R's and Street names

FYI

Jeff Jacobs
Director of Community Development
Centex Homes
Bay Area Division
2527 Camino Ramon, Suite 100
San Ramon, CA 94583
925-415-1636 (desk)
925-415-1601 (fax)

----- Forwarded by Jeff Jacobs/NCL/WSR/US/CentexHomes on 05/24/2006 03:59
PM -----

"Gerri Caruso"
<GCaruso@ci.sunnyvale.ca.us> **To:** <jjacobs@centexhomes.com>
cc:
Subject: Re: CC&R's and Street names
05/24/2006 02:55
PM

ATTACHMENT J
Page 6 of 6

I am in receipt of the plans as of yesterday and will do my best to review before I leave tonight. Do not add the street names to your map yet until I can do a last verification next week with Public Safety that they are o.k. I will not get to the CC&Rs until later next week.

>>> <jjacobs@centexhomes.com> 5/24/2006 9:21 AM >>>
Geri -

Hopefully you are now in possession of the latest dimensioned site plan. Please let me know asap if this plan is acceptable.

I have attached draft CC & R's for your review

(See attached file: CC&R's 5-23-06.doc)

Our two north south streets will be named...
Reston Terrace
Riorden Terrace
The East West street will be named...
Hines Terrace

Thanks for all of your help.

I look forward to moving forward....

Jeff Jacobs
Director of Community Development
Centex Homes
Bay Area Division
2527 Camino Ramon, Suite 100
San Ramon, CA 94583
925-415-1636 (desk)
925-415-1601 (fax)

CC: <lwbradley@centexhomes.com>,
<Arthur_S_Adrian/US/CentexHomes@centexhomes.com>, "Marty Deforge" <mdeforge@hnh-engineers.com>